IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.357 OF 2004

M/s.Nummer Eins Motors (India) Pvt.Ltd. ... Petitioners.

vs.

The Central Warehousing Corporation. .... Respondents.

Mr.K.M.Jawle, for Petitioners.

Ms.S.I.Shah i/b. S.I.Shah & Co., for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 5th July,2005

P.C.:-

1. By this petition, the petitioners challenge the Award dated 12.5.2004 made by the sole Arbitrator. The only ground on which the Award is challenged is that the agreement in which the arbitration clause was contained, was the agreement by which the licence of sub-lease of premises was created in favour of the petitioners and therefore, the disputes arising under that contract were triable exclusively by the Small Causes Court under the Rent Act, and therefore, the arbitration clause was not valid. Admittedly, this objection to

the arbitrability of the dispute was not raised before the learned Arbitrator. Really speaking, therefore, the ground cannot be allowed to be raised for the first time in the petition. But even if that ground is permitted, perusal of the clause of the agreement between the parties dated 8.11.2001 shows that what was being done by the agreement was that the warehousing facility was extended by the respondents to the petitioners for storing their goods. The agreement further shows that what was being paid by the petitioners to the respondents was storage charges and supervision charges and not the licence fee. The agreement further shows that goods that were stored by the petitioners in the godown were held by the respondents as a bailee. The agreement further shows that by clause 7 it was stated that the godown where the warehousing is being made available to the petitioners, is taken on lease by the respondents from the Mumbai Port Trust. Therefore, if that lease is terminated, the warehousing facility extended by the respondents to the petitioners was also to be discontinued or to be terminated. Therefore, the submission on behalf of the petitioners that Clause 7 creates licence or lease in favour of the petitioners, in my opinion has no substance.

2. The learned Counsel then submits that the recitals in the agreement do not disclose real relationship between the parties. Such argument could have been possible for the petitioners to be advanced when the oral evidence was being led before the learned Arbitrator, firstly making such claim in the statement of claim and then proving that claim. Admittedly, no such

claim was raised nor was any attempt made to prove it. Whether the document produced on record discloses real relationship between the parties or not, is a question of fact and therefore, of necessity it has to be pleaded first and then has to be proved. Taking overall view of the matter therefore, it is clear that the petition has no substance. In the result therefore, the petition fails and is dismissed. Petitioners are directed to pay cost of this petition to the respondents as incurred by the respondents.